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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SELINA KEENE, MELODY FOUNTILA,
MARK MCCLURE,

Plaintiffs,

vs.

CITY and COUNTY OF SAN FRANCISCO;
LONDON BREED, Mayor of San Francisco in
her official capacity; CAROL ISEN, Human
Resources Director, City and County of San
Francisco, in her official capacity; DOES 1-
100,

Defendants.

Case No. 4:22-cv-01587-JSW

**ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED**

(Civil L.R. 3-12(b) and 7-11)

Judge: Hon. Jeffrey S. White

Trial Date: None set.

INTRODUCTION

The City and County of San Francisco (the “City”) respectfully asks the Court to consider whether the above-captioned action (the “*Keene* Action”) is related to two later filed actions: *Rodriguez v. City and County of San Francisco*, N.D. Cal. Case No. 3:23-cv-03139 (the “*Rodriguez* Action”); and *Yancey v. London Breed, et al.*, N.D. Cal. Case No. 4:22-cv-09045-DMR (the “*Yancey* Action”).

The Court previously related seven other actions to the *Keene* Action: *Gozum v. City and County of San Francisco*, No. 4:22-cv-03975-JSW (the “*Gozum* Action”); *Guardado, et al. v. City and County of San Francisco*, No. 4:22-cv-04319-JSW (the “*Guardado* Action”); *Shaheed, et al. v. City and County of San Francisco*, No. 4:22-cv-06013-JSW (the “*Shaheed* Action”); *Debrunner, et al. v. City and County of San Francisco, et al. (Debrunner Action)*, No. 4:22-cv-07455-JSW; *Cook v. City and County of San Francisco*, No. 4:22-cv-07645-JSW (the “*Cook* Action”); *Sanders v. San Francisco Public Library*, No. 23-cv-00211-JSW (the “*Sanders* Action”); and *Monegas v. City and County of San Francisco Department of Public Health* (the “*Monegas* Action”) (collectively “Related Vaccine Actions”). The recently filed *Rodriguez* and *Yancey* Actions bear a substantially similar relationship to *Keene* as the Related Vaccine Actions and likewise should be related.

Both the *Rodriguez* and *Yancey* Actions were brought by former City employees who allege they were terminated for failure to comply with the City’s COVID-19 vaccination policy. *See* Declaration of Adam M. Shapiro (“Shapiro Decl.”) Ex. 1 (*Rodriguez* Complaint); Shapiro Decl. Ex. 2 (*Yancey* Complaint). Like the plaintiffs in the *Keene* Action and many of the other Related Vaccine Actions — including *Gozum* and *Guardado* — *Rodriguez* asserts claims under the California Fair Employment and Housing Act (“FEHA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”) based on the City’s alleged failure to grant a religious exemption from the City’s vaccination policy. Shapiro Decl. Ex. 1. *Yancey* is representing herself pro per and her pleading is not the model of clarity. *See* Shapiro Decl. Ex. 2. However, it appears, that *Yancey* too asserts FEHA¹ and Title VII

¹¹ *Yancey* erroneously refers to FEHA as the “California Fair Housing Employment and housing Act.”

claims on similar grounds. *Id.* Additionally, like the Plaintiffs in *Guardado*, *Debrunner*, and *Sanders*, Yancey asserts a First Amendment claim. *Id.*

The *Rodriguez* Action was filed on April 20, 2023 in San Francisco Superior Court. Shapiro Decl. ¶ 3. On June 26, 2023, the City filed an answer and removed the case to this Court pursuant to 28 U.S.C. § 1441. *Id.* The *Yancey* Action was filed on December 21, 2022, but service was not attempted until on or around June 12, 2023.² *Id.* ¶ 5. On July 5, 2023, Magistrate Judge Ryu granted Defendants' Administrative Motion to Enlarge Time for Responding to Plaintiff's Complaint, extending the deadline to file a responsive pleading to August 10, 2023. *Id.*

On May 12, 2023, the City filed a motion to consolidate the *Keene* Action and the Related Vaccine Actions. Shapiro Decl. ¶ 6. The motion is now fully briefed and pending before this Court. *Id.*

DISCUSSION

Cases are related if:

- (1) The actions concern substantially the same parties, property, transaction, or event; and
- (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

N.D. Cal. Local Civil Rule 3-12(a). Whenever a party believes an action filed in this district may be "related to an action which is or was pending in this District ..., the party must promptly file in the lowest-numbered case an Administrative Motion to Consider Whether Cases Should be Related." *Id.* Rule 3-12(b).

Here, the *Rodriguez* Action and *Yancey* Action concern substantially the same parties as the *Keene* Action and the Related Vaccine Actions, as the City, its constituent departments, and/or City employees are parties in to each of the actions. The plaintiff in the *Yancey* Action erroneously sued Mayor London Breed and a number of other current or former City employees instead of her employer (the City), even though supervisory employees are not subject to liability for alleged discrimination under either FEHA or Title VII. *Holly D. v. California Institute of Technology*, 339 F.3d 1158, 1179

² Defendants in the *Yancey* Action contend service was improper, since Yancey did not attempt to personally serve any of the Defendants, despite the fact that she appears to be suing all of them in their personal capacities.

(9th Cir. 2003) (Title VII); *Reno v. Baird*, 18 Cal.4th 640, 644-645 (1998) (FEHA). Moreover, Yancey's complaint does not allege any facts as to the individual defendants.

The plaintiffs in *Keene*, *Rodriguez*, *Yancey* and the other Related Vaccine Actions are all current or former City employees who are challenging the City's vaccine mandate claiming that the City failed to provide accommodations. If certified, the putative class in the *Guardado* Action could potentially include the plaintiffs in the *Rodriguez* and *Yancey* Actions. The *Rodriguez* and *Yancey* Actions, like *Keene* and the other Related Vaccine Actions concern substantially the same events, as they arise out of challenges to the City's vaccine mandate, including the validity of the policy, both facially and as applied, would necessarily affect the plaintiffs across all actions.

It is also "likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the [*Rodriguez* and *Yancey* Actions were] conducted before [a] different Judge" than the other Related Vaccine Actions. N.D. Cal. Local Civil Rule 3-12(a)(2). The *Keene* Action and the seven other Related Vaccine Actions, including the *Guardado* Putative Class Action, challenge the same policy and are all pending before the Honorable Jeffrey S. White. In the interest of judicial efficiency, and to avoid conflicting decisions, the *Rodriguez* and *Yancey* Actions too should be heard before Judge White.

CONCLUSION

Because the *Rodriguez* and *Yancey* Actions are related to *Keene* and the Related Vaccine Actions, the Court should assert its case management authority over the *Rodriguez* and *Yancey* Actions, find that they are related and reassign the cases to the Honorable Jeffrey S. White.

Dated: July 11, 2023

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